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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,740

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Rolf Kalland

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EXAMINER

RUTKOWSKI, JEFFREY M

ART UNIT

PAPER NUMBER

2619

NOTIFICATION DATE

DELIVERY MODE

06/30/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,740	<b>Applicant(s)</b> KALLAND ET AL.	
	<b>Examiner</b> JEFFREY M. RUTKOWSKI	<b>Art Unit</b> 2619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/06/2004</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the elements of **claims 12-22** must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The abstract of the disclosure is objected to because of the use of legal phraseology, such as means for, in the abstract and there also appears to be a typographical error “(figure 2)” at the end of the abstract. Correction is required. See MPEP § 608.01(b).

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3. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code, see paragraph 0005 of the present application's pre-grant publication. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

### ***Claim Objections***

4. **Claims 4-11 and 14-22** are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim.

See MPEP § 608.01(n). Accordingly, the **claims 4-11 and 14-22** have not been further treated on the merits.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 1-23** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. For **claims 1-11**, the use of the phrase "and/or" on page 16 lines 24 and 30 and also on page 17 line 4 renders of **claim 1** renders the claims indefinite because it is unclear if both a signaling message and state information is required. Also, **claims 1-11** do not set forth any clear steps for carrying out the claimed method.

8. The use of the phrase "and/or" in the preamble of **claim 1** also renders the claims indefinite because it is not clear if the purpose the method is monitoring or limiting.

9. The phrase "such as" on line 13 of **claim 1** renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

10. It is unclear what is meant by the phrase "routed differently" on line 10 of **claim 1**. For example, it is not clear if the phrase is referring to a different route or if the phrase is referring to signaling information having a different priority level. The Examiner has interpreted the phrase "routed differently" to refer to a signaling connection that takes a separate route from the data communications session.

11. It is unclear on lines 19-20 of **claim 1**, what the at least one session is individualized from.

12. Additionally, **claims 4 and 5** also make use of the “and/or” phraseology.

13. For **claims 12-22**, it is not clear what is meant by a "means for limiting". Additionally, the specification does not disclose what structure(s) corresponds to the recited means-plus-function limitations (Finisar Corp. v. DirecTV Group Inc., 86 USPQ2d 1609 Fed. Cir. 2008).

**Claim 13** is also indefinite because it refers to **claim 12** as being a method.

14. For **claim 23**, this claim is indefinite because the claim does not recite what steps are being performed. Additionally, the specification does not define what element(s) are included as a "computer-readable software means".

#### ***Claim Rejections - 35 USC § 101***

15. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

16. **Claims 12-22** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter because a “means for limiting” includes firewall functionality, which could also be implemented as a computer program, per se.

17. **Claim 23** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, namely a computer program.

#### ***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

20. **Claims 1, 12 and 23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell et al. (US Pg Pub 2003/0093481), hereinafter referred to as Mitchell, in view of Michielsens et al. (US Pg Pub 2002/0026515), Tianien (US Pat 6,101,250) and Koskelainen (US Pg Pub 2003/0040280).

21. For **claims 1, 12 and 23**, Mitchell discloses an architecture that establishes a bearer path (mutual data communications session) between User A **14** and User B **16** (two clients). The architecture also uses a signaling path that is routed along a separate (routed differently) than the bearer channel path [**figure 1**]. The signaling messages are used to create distinct (individuated) bi-directional paths (sessions) over the bearer channel (mutual data communications session) [**0046**].

22. Mitchell discloses that a middlebox **10,11** could also include firewall and Network Address Translation (NAT) functionality [**0047**], suggesting the use of monitoring. Mitchell does not disclose billing functionality. Michielsens discloses signaling and media information between two hosts is monitored and billed on a per-session basis [**0065**]. It would have been

obvious to a person of ordinary skill in the art at the time of the invention to use billing functionality in Mitchell's invention to make sure customers are accurately charged for the network services they used [**Michielsens, 0068**].

23. Mitchell discloses using a middlebox **10,11** as a firewall or a NAT proxy. Mitchell does not disclose the use of a rate limiter. Koskelainen discloses a push proxy (rate limiter) that performs rate control based on header information [**0034-0035**]. It would have been obvious to a person of ordinary skill in the art at the time of the invention to use a push proxy in Mitchell's invention to make sure a user's link does not become saturated.

24. Mitchell discloses the use of a signaling connection for connection establishment [**0046**]. Mitchell does not disclose other uses for the signaling connection. Tiainen discloses a signaling connection that is used to notify a node of a cause of a call release **3** [**col. 6 lines 30-32, figure 5**]. After a node receives the call release **3** message, the call is released [**col. 7 line 8**]. It would have been obvious to a person of ordinary skill in the art at the time of the invention to use a signaling network to transfer call status information in Mitchell's invention to provide improved call control functionality [**Tiainen, col. 4 lines 50-55**].

25. The combination of Mitchell, Koskelainen and Tiainen disclose an architecture where a signaling message is transmitted to a traffic limiter to close a connection. Additionally, the combination of Mitchell and Tiainen disclose the use of a bi-directional signaling connection [**Tiainen, figure 5**].



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY M. RUTKOWSKI whose telephone number is (571)270-1215. The examiner can normally be reached on Monday - Friday 7:30-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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06/21/2008

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